Dakota Resource Council
Environmental Defense
Natural Resources Defense Council

June 30, 2003

Richard Long, Director
Air and Radiation Program
U.S. Environmental Protection Agency, Region VIII
Mailcode: 8P-AR
999 18th Street, Suite 300
Denver, Colorado 80202

RE: Comments on EPA's May 23, 2003 Notice of Availability of Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana (68 Fed. Reg. 28,211)

Dear Mr. Long:

The Dakota Resource Council (DRC) and the Rocky Mountain Office of Environmental Defense (ED) respectfully submit the following comments on EPA's Notice of Availability of Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana, which was noticed in the Federal Register on May 23, 2003 (68 Fed.Reg. 28211). EPA's May 2003 analysis simply confirms the results of EPA's modeling study released in March of 2002 and, in fact, confirms what EPA has known for many years – that violations of the SO_2 increments are occurring in the Class I areas of North Dakota and Eastern Montana due to industrial sources within the state of North Dakota. Consequently, EPA continues to be under the obligation to ensure that North Dakota's implementation plan is revised to correct the increment violations. However, EPA has ignored this statutory requirement. Unfortunately, EPA has failed to implement the Clean Air Act by formally disapproving North Dakota's state implementation plan (SIP) and calling for a SIP revision to address the increment violations.

The unenforceable, vague commitments such as the recent May 2, 2003 Memorandum of Understanding between the state and EPA do not satisfy EPA's legal obligations to immediately remedy the increment violations. The state's latest analysis of increment consumption continues to follow an approach to modeling of PSD increment compliance that contradicts the Clean Air Act and EPA regulation and policy, in spite of EPA's previous statements that it found North Dakota's increment analysis inconsistent with the mandates of the Clean Air Act. North Dakota has made clear that it will not implement the PSD program as required by the Clean Air Act, and thus EPA's efforts to resolve these violations without imposing enforceable deadlines for revising the SIP to correct these violations have only unlawfully deferred critical air quality protections afforded by the Clean Air Act. It is now well past time for EPA action to remedy these Clean Air Act violations.

As you know, DRC submitted detailed comments on the EPA's March 2002 modeling analysis in an April 5, 2002 letter which asserted that EPA underestimated increment consumption in its analysis. In its May 2003 analysis, the EPA did not make any changes to address DRC's comments, although EPA did provide its response to DRC's comments. Both DRC and ED are still concerned that EPA's modeling analysis has underestimated the extent of existing PSD increment violations, as detailed below. However, even with these flaws, the EPA's modeling analysis, now refined with MM-4 and MM-5 meteorological inputs and more receptors included for each Class I area, still shows numerous violations of the three-hour and twenty-four hour SO_2 increment in the Class I areas of North Dakota and Eastern Montana. Thus, if EPA were to revise the modeling to address our comments, such a revised analysis would show more extensive increment violations at the four Class I areas. Consequently, any revision to the modeling analyses based on our comments below should not require EPA to further delay the imposition of enforceable deadlines for revision to the North Dakota SIP and will only emphasize the imperative of EPA acting to fulfill its responsibilities under the law. Further, EPA should ensure that the emission reductions ultimately required provide for an adequate margin of safety in protecting the increments, to account for emissions for which data was unavailable (e.g., oil and gas development in Eastern Montana) and to provide room for the likely growth in SO_2 emission sources (e.g., North Dakota's Vision 21 Project to provide for new lignite-fired power plants).

Our comments on the EPA's May 2003 increment consumption analysis are as follows:

1. EPA Failed To Include the Emissions From the Milton R. Young Power Plant As Consuming the Available Increment

On June 17, 2002, EPA issued a Notice of Violation to the Minnkota Power Cooperative finding that Minnkota made major modifications at both Units 1 and 2 of its Milton R. Young Power Plant. Because modification of these two units commenced after the SO_2 major source baseline date of January 6, 1975, all of the emissions from these two units must be modeled as increment consuming in the increment analysis. However, EPA failed to consider these emissions in its modeling analysis.

Specifically, the definition of "baseline concentration" in 40 C.F.R. § 52.21(b)(13)(ii) (as well as in § 33-15-15-01.d(2)(a) of the North Dakota SIP) provides that:

> The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
> (a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date. . . .

Because "construction" is defined at 40 C.F.R. §52.21(b)(8) and §33-15-15-01.1.1 of the North Dakota SIP as including modification, these major modifications at both units of the Milton R. Young plant mean that all emissions from both units affect the

applicable increment and thus must not be considered part of the baseline concentration. Accordingly, EPA should revise its modeling analysis to include all of the SO_2 emissions from both of the units of the M.R. Young power plant as increment consuming emissions.

2. EPA Must Require the Adoption of Enforceable Limits Reflective of the Current Emission Rates Modeled

In its modeling analysis, EPA modeled each power plant at its 90th percentile emission rate, rather than using each source's allowable emission rate or its maximum short term emission rate. EPA's approach is inconsistent with EPA's modeling guidelines as well as EPA policy discussed in the August 7, 1980 PSD rulemaking, which generally require that sources be modeled at their allowable emission rates. See §9.1.2 of 40 C.F.R. Part 51, Appendix W; 45 Fed.Reg. 52718. DRC made this comment in its April 5, 2002 comment letter, but EPA did not revise its current year emission inventory in its May 2003 analysis to address this issue. If EPA won't change this approach in its analysis, then EPA must instead require the adoption of enforceable emission limits reflective of the 90th percentile emission rate modeled. Clearly, emission rates much lower than the current 90th percentile emission rate will be required at some sources to remedy the existing SO_2 increment violations. However, EPA must require all facilities modeled to be subject to allowable emission limits reflective of the emission rate modeled in order to ensure protection of the increments.

Thank you for considering these comments. Please do not hesitate to contact us if you would like to discuss these issues further.

Sincerely,

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